

California Victim Compensation and Government Claims Board
Open Meeting Minutes
February 17, 2011, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Acting Chairperson, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, February 17, 2011, at 10:04 a.m. Also present were Board members Les Kleinberg, Deputy Controller, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Julie Nauman, Executive Officer; Patty Harris, Chief Deputy Executive Officer; and Wayne Strumpf, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the January 20, 2011, Board Meeting

The Board voted to approve the minutes of the January 20, 2011, Board meeting.

Item 2. Public Comment

The meeting was opened to public comment. No public comment was provided.

Item 3. Executive Officer's Statement

Update on Executive Officer's Delegated Authority to Approve Certain Government Claims

At the December 16, 2010, Board meeting, the Board delegated to the Executive Officer the authority to approve additional government claims filed against the California Department of Corrections and Rehabilitation (CDCR) and the Department of Mental Health (DMH) by contracting vendors who have not yet been paid for services completed in fiscal year 2009-10. Government Claims Program (GCP) staff continue to process the claims in an expedited manner. Currently staff are processing 41 DMH claims and 5 CDCR claims. GCP staff are awaiting required documentation for 68 DMH claims. Under the delegated authority, 464 claims were allowed totaling nearly \$47 million. At the December 16, 2010, meeting, the Board allowed 111 claims on the government claims consent agenda totaling approximately \$70 million.

Youthful Offender Program Gives Back to Victims of Crime

On Tuesday, February 15th the Executive Officer took part in a big check event at the N.A. Chaderjian Youth Correctional Facility in Stockton. CalVCP was honored to receive two donations from the California Department of Corrections and Rehabilitation and the California Prison Industry Authority in the amounts of \$9,496.62 and \$6,625.20 to assist victims of violent crime. The money was raised and donated by youthful offenders at two California Division of Juvenile Justice facilities. The youthful offenders participated in the Free Venture Program, a program that allows youthful offenders to work for private companies from within correctional facilities and earn a comparable wage. The youthful offenders participating in these work programs pay taxes, room and board, and family support. A key element of the program requires the youth to give 20 percent of their net wages to compensate victims of crime. The presentation gave the youthful offenders an opportunity to see where and how the money donated would be spent. Additionally, it gave them a chance to see how their crimes have impacted their victims beyond the initial act.

Item 4. Contract Report

Two IT purchases were made in compliance with the California Technology Agency Policy Letter 09-06, which governs the purchases of information technology through the Information Technology Acquisition Planning process. Board Executive Management, State and Consumer Services Agency, and the California Technology Agency approved the purchases prior to acquisition.

The purchases of storage area networks and the renewal of MSDN licenses were made through the Department of General Services purchasing programs and are critical to the continuation of Board IT operations.

Item 5. Proposal to Consider Modifications to Covered Benefits, Rates and Fees Under the California Victim Compensation Program (CalVCP)

Executive Officer Nauman reported that the Board participated in legislative budget hearings in the Senate and Assembly on January 27th and February 2nd, respectively. Ms. Nauman reported that there was a clear recognition from both houses regarding the importance of addressing the condition of the Restitution Fund as the CalVCP looks to the future and its ability to continue to provide services to victims violent of crime. Ms. Nauman reported that both subcommittees acknowledged and recognized the authority of the Board to take certain actions to address revenues and expenditures in an effort to keep the Restitution Fund solvent.

Ms. Nauman presented charts depicting the diminishing condition of the Restitution Fund. She reported the following:

- Restitution Fund revenue is declining. Currently Restitution Fund revenue is 2 percent less compared to last year. It is projected that revenue for fiscal year 2010-11 will be down 3 percent from fiscal year 2009-10.
- CalVCP is experiencing an increase in claim payments. CalVCP's projected claims payments for 2010-11 is \$98.7 million, a 2.1 percent increase. For fiscal year 2010-11, the Governor's budget estimates CalVCP revenues will be down by 3 percent, while claim payments are projected to increase.
- For the past few years there continues to be a decline in the Restitution Fund reserve carryover to the following fiscal year. CalVCP began with a \$24.5 million reserve carried over from fiscal year 2010-11. At this pace, without budget reductions, the Restitution Fund will be \$4.2 million in the red by June 2012 and will have a \$36.2 million negative balance by June 2013.

Executive Officer Nauman reported that changes to the budget must be made in order to avoid a deficiency. She reported that CalVCP reduced its internal operating expenses and, as a result, CalVCP will achieve a \$3.5 million savings this fiscal year. Ms. Nauman explained that under the Governor's budget, and with the savings in state operations, CalVCP would end fiscal year 2011-12 with a \$4.9 million reserve, which is not a sufficient reserve to carryover to fiscal year 2012-13.

Ms. Nauman reported that the impact of the proposals that staff recommended for the Board's consideration, in addition to the Governor's proposed budget, would allow CalVCP to end fiscal year 2011-12 with a minor reserve of \$23.5 million. That amount would be carried over to fiscal year 2012-13, leaving the CalVCP with a Fund reserve of \$15.5 million. She added that thereafter CalVCP would be on a downward trend again.

Ms. Nauman stated that fundamentally the CalVCP is structurally out of balance between revenue and program expenses and compensation benefits. She stated that the decline in revenue and the continuing demand for the program necessitates that adjustments be made to achieve structural balance in order for the CalVCP to continue its work.

Rubia Packard, Deputy Executive Officer, Victim Compensation Program, presented the Proposal to Consider Modifications to Covered Benefits, Rates and Fees Under the California Victim Compensation Program for the Board's consideration and action. The proposal included the following options:

1. **Chiropractic Treatment and Physical and Occupational Therapy:** Combine chiropractic treatment and physical and occupational therapy under the Complementary and Alternative Medicines category; limit to a combined total of five sessions; and require a physician's recommendation for additional sessions, up to a maximum of 20 sessions.
2. **Income and Support Loss Benefits:** Require income and tax records from the Franchise Tax Board as a demonstration of income for the purpose of qualifying for income-support loss benefits; limit payment of this benefit to victims who are actually employed at the time of the crime; and establish a maximum monthly benefit of \$1,000 and a \$35,000 lifetime maximum benefit per applicant per qualifying crime.
3. **Vehicle Purchase, Renovating and Retrofitting:** Establish a maximum benefit of \$30,000 for vehicle purchase, renovation and retrofitting per qualifying crime.
4. **Attorneys' Fees and Verification of Services:** Direct staff to determine the appropriateness of the limit of payment for attorneys' fees in statute and to prepare a regulation to require verification of the reasonable value of legal services provided to the applicant.
5. **Funeral and Burial Expenses:** Establish a maximum benefit for funeral and burial expenses of \$5,000 and amend the regulations to ensure that expenses paid are appropriate, including, but not limited to, eliminating food and beverage expenses as reimbursable expenses.
6. **Maximum Benefit Amount:** Establish a maximum benefit amount of \$63,000.
7. **Medical Reimbursement:** Reduce the CalVCP Medical Reimbursement Rate to the flat Medicare rate and adopt a reimbursement rate reduction of 20 percent for restorative cosmetic surgery, prosthetics, hearing aids and eyeglasses, and foreign providers.
8. **Mental Health Services:** Reduce the CalVCP Mental Health Reimbursement Rate by 10 percent.
9. **Mental Health Intern Services:** Continue the reduction of the reimbursement rate for mental health services provided by interns adopted by the Board on December 16, 2010, and implemented by staff in January 2011.

Ms. Packard reported that the projected cost savings subtotal for fiscal year 2010-11 (three months) would be \$1.12 million if the following proposals are adopted by the Board: combining chiropractic treatment and physical and occupational therapy; establishing a monthly benefit of \$1,000 and maximum benefit of \$35,000; establishing a maximum benefit of \$30,000 for vehicle purchase, renovating, and retrofitting; establishing a maximum benefit for funeral and burial expenses of \$5,000 and excluding food and beverage expenses; and establishing a maximum benefit amount of \$63,000. For fiscal year 2011-12, the projected cost savings would be \$6.2 million.

Ms. Packard reported the projected cost savings subtotal for fiscal year 2010-11 (three months) would be \$0.70 million if the Board adopted the staff recommendation to reduce the medical reimbursement rate to the flat medicare rate and adopted a reimbursement rate reduction of 20 percent for restorative cosmetic surgery, prosthetics, hearing aids and eyeglass, and foreign providers. For fiscal year 2011-12, the projected cost savings would be \$8.4 million.

Ms. Packard reported that the projected savings subtotal for fiscal year 2010-11 (three months) for the continuation of the 25 percent reduction in the rate of payment of interns, per session, as adopted by the Board on December 16, 2010, would be \$0.6 million and \$2.6 million for fiscal year 2011-12, which also includes the proposal to make additional treatment plans more restrictive.

Ms. Packard reported that if all of the proposals were adopted, the projected savings would be \$2.42 million for fiscal year 2010-11 (three months) and \$17.20 million for fiscal year 2011-12.

Ms. Nauman reported that each option has a different implementation timeframe depending on whether a filing with the Secretary of State or a regulatory change is required. She stated that, in

most instances, CalVCP expects to be able to implement the changes by April 1, 2011, and the remaining options may not be implemented until regulations are filed. Ms. Nauman stated that if the Board approved the proposals, she would also request that the Board authorize the Executive Officer to begin the formal rulemaking process for the options that require a regulation change. She stated the sooner the changes could be implemented and the savings achieved, the greater chance the CalVCP has of getting through fiscal year 2011-12 in the positive. She further stated the carryover from the changes that occur during the remainder of this fiscal year are critical for the solvency of the budget year.

Chairperson Lopez opened the meeting to public comment. She stated the Board received several letters from individuals regarding the proposals.

The following individuals appeared and provided public comment:

- Tim Ragan, attorney, provided comment regarding the following proposals: limitation of payment of attorneys' fees and verification of legal services provided; establishment of a maximum benefit for funeral and burial expenses; establishment of a maximum benefit amount.
- Alex Conger, Valley Community Counseling Services, provided comment regarding the proposal to continue the 25 percent reduction in the rate of payment of interns per session, adopted by the Board on December 16, 2010.
- Linda Siegel, management analyst, provided comment regarding ways to maximize federal funds and the establishment of a process for handling zero award claims, claims received and approved which do not result in any payments.
- Annie Lam, California Chiropractic Association, provided comment regarding the proposal to combine chiropractic treatment and physical and occupational therapy modalities; limit treatment to a combined total of five sessions; and require a physician's recommendation for additional sessions, up to a maximum of 20 sessions.
- Vanessa Kieu, Paladin Eastside Psychological Services, provided comment regarding the proposal to continue the 25 percent reduction in the rate of payment of interns per session, adopted by the Board on December 16, 2010.
- Christine Ward, Crime Victims Action Alliance, provided comment regarding the following proposals: verification of income and support loss; limitation of income and support loss benefits; and the establishment of a maximum benefit amount.
- Margaret Petros, Mothers Against Murder, provided comment regarding the following proposals: establishment of a maximum benefit for funeral and burial expenses; limitation on income and support loss benefits; and verification of attorneys' fees for services rendered to applicants. Ms. Petros provided the Board with copies of a press release from the National Funeral Directors Association.
- Dr. Ana Nogales, Casa de la Familia, provided comment regarding the proposal to continue the 25 percent reduction in the rate of payment of interns per session, adopted by the Board on December 16, 2010.
- Ellen Yin-Wycoff, California Coalition Against Sexual Assault, provided comment regarding the following proposals: verification of income or support loss; limitation on income and support loss benefits; and the continuation of the 25 percent reduction in the rate of payment of interns per session, adopted by the Board on December 16, 2010.
- Donna Wills provided comment regarding the following proposals: establishment of a maximum benefit for funeral and burial expenses and the establishment of a maximum benefit amount.
- Michael Siegel, attorney, provided comment regarding the following proposals: combining chiropractic treatment and physical and occupational therapy modalities; limiting treatment to a combined total of five sessions, and requiring a physician's recommendation for additional sessions, up to a maximum of 20 sessions; limiting income and support loss benefits;

establishing a maximum benefit for vehicle purchase, renovation, and retrofitting per qualifying crime; limiting payment of attorneys' fees and verifying legal services provided; establishing a maximum benefit for funeral and burial expenses; and establishing a maximum benefit amount.

Chairperson Lopez asked Mr. Siegel if he had any concern with the Board going forth with a regulation that would require verification of the reasonable value of legal services provided to applicants. Mr. Siegel stated that under the law there is currently a definition of what is reasonable and appropriate. He stated that the fact that an attorney signs an application is evidence that they are representing the client. He further stated that it would be time consuming to keep track of telephone calls with clients and track every time claim files are reviewed.

Ms. Lopez thanked all of the members of the public for their time and testimony. She stated that the Board is faced with a tremendous challenge of consistently providing benefits and services to victims of crime while at the same time making sure that the Restitution Fund remains solvent for future victims.

Board member Ramos thanked the members of the public for their testimony. He stated that all of the functions that they provide for victims are important, but it is equally important to ensure that the Restitution Fund remains solvent. Mr. Ramos asked staff to explain how they arrived at the lifetime benefit maximum amount of \$35,000 for the income and support loss benefits. Ms. Nauman stated that staff surveyed other states in an effort to find a comparable amount.

Board member Ramos asked if a regulation change was required for the cap on funeral burial expenses. Ms. Nauman stated that regulation does not state that the amount is \$7,500, rather it states that the Board may authorize up to \$7,500. She stated that the language gives the Board the authority to set the rate up to that maximum without a regulatory change.

Chairperson Lopez stated that during public comment Christine Ward, Crime Victims Action Alliance, stated that placing a cap on the monthly maximum benefits for income and support loss had previously been determined not to be cost effective. Chairperson Lopez asked Ms. Nauman if the Board visited that issue previously. Ms. Nauman stated that staff recommended items for Board action regarding mental health and medical services, interns, and additional treatment plans and had not previously brought options regarding other types of benefits. Ms. Nauman stated that the Board's direction was to bring all options related to covered benefits, rates and fees. She stated that, while she was reluctant to look at other areas, following the Board's direction, the proposals include an entire menu of options for Board consideration.

Chairperson Lopez asked Ms. Nauman to explain the reasoning behind allowing zero dollar awards, which was mentioned by one of the members of the public. Ms. Nauman stated that the CalVCP has a fiduciary responsibility to ensure that funds are not expended before the determination is made that the applicant is eligible. She stated that the concept of paying compensation before eligibility is determined would be programmatic for the State and federal Victims of Crime Act grants. She further stated that CalVCP must determine whether a crime occurred and make sure that the applicant is eligible.

Board member Ramos stated that in 2001, the Board had to reduce program benefits, which was difficult. He stated that years later it was great to resume providing more services to victims when the Restitution Fund was stable. He stated that once again the Restitution Fund is not fiscally solvent as a result staff developed these proposals to mitigate the problem. He stated that staff has done a great job reducing administrative fees and adding new technology. Board member Ramos further stated that the Restitution Summit that was held in November 2010 was another very

important event because it brought awareness to the importance of improving restitution collections efforts to ensure stability of the Restitution Fund.

The Board adopted the following staff recommendations:

- Limit chiropractic, physical and occupational therapy to a combined total of five sessions and require a physician's recommendation for additional sessions up to a maximum of 20 sessions.
- Limit income and support loss benefits to victims who are actually employed at the time of the crime and require income and tax records to verify income.
- Establish a maximum benefit of \$30,000 for vehicle purchase, renovation and retrofitting per qualifying crime.
- Determine the appropriateness of the limit of payment for attorneys' fees in statute and prepare a regulation that requires verification of the reasonable value of legal services provided to an applicant.
- Establish a maximum benefit for funeral and burial expenses of \$5,000 and exclude food and beverage expenses as reimbursable expenses.
- Establish a maximum benefit amount of \$63,000.
- Reduce the CalVCP medical reimbursement rate to the flat Medicare rate and reduce restorative cosmetic surgery, prosthetics, hearing aids and eyeglasses, and foreign provider rates by 20 percent.
- Reduce the CalVCP mental health reimbursement rate by 10 percent.
- Continue the reduction of the reimbursement rate for mental health services provided by interns adopted by the Board on December 16, 2010, and implemented by staff in January 2011.
- The Board delayed the establishment of a maximum monthly benefit of \$1,000 and a maximum benefit per qualifying crime of \$35,000 per applicant. The Board directed staff to obtain information from other jurisdictions to determine the appropriate monetary adjustments.

Item 6. Consent Agenda (Nos. 1- 346)

The Board voted to adopt the staff recommendations for item numbers 1-346 with the exception of number 79, which was removed because it was a duplicate claim.

Item 7. Request for Delegation of Authority Under Government Code Section 935.6 by the California Highway Patrol

The California Highway Patrol requested that the Victim Compensation and Government Claims Board grant its delegated authority to settle and pay or reject timely claims that do not exceed \$1,000.00 each.

The Board voted to authorize CHP to settle and pay or reject timely claims that do not exceed \$1,000.00 per claim, which delegation shall be in effect through February 29, 2012.

Item 8. Bid Protest of Valley Communications, Inc. Request for Quotation No. 09-120626

On August 26, 2010, the Office of the State Chief Information Officer (OCIO) released Request for Quotation (RFQ) Number 09-120626, seeking to obtain network and voice cabling services in support of the OCIO's existing LAN-WAN cabling infrastructure. Five bids were timely submitted and the lowest responsive bid was submitted by Black Box Network Services (Black Box) in the amount of \$732,442.00. The second lowest responsive bid was submitted by Valley

Communications, Inc. (Valley) in the amount of \$733,400.00. The Notice of Intent to Award the contract to Black Box was sent on October 19, 2010. Valley submitted their protest of the intended award on October 27, 2010. On November 8, 2010, Valley submitted a Detailed Statement of Protest to support its contention that it should have been awarded the contract because Black Box's bid was non-compliant with the RFQ. Valley alleged that Black Box could not meet the warranty requirement of the RFQ. The Department of General Services (DGS) responded on behalf of the OCIO.

The Board voted to adopt the Hearing Officer's recommendation to deny the protest.

Item 9. Robert Cuevas (Pen. Code, § 4900 et seq)
Claim Number G581280

The Penal Code section 4900 claim of Robert Cuevas is as a result of a conviction for robbery of a Rite Aid pharmacy store on May 14, 2003. Mr. Cuevas met the statutory requirements to receive compensation under Penal Code section 4900 because he proved by a preponderance of the evidence that he did not commit the crimes for which he was charged. Mr. Cuevas was convicted on December 9, 2003, and was released from prison on September 5, 2008, thus he spent 1,627 days in prison and is eligible for \$162,700.00 in compensation.

The Board voted to adopt the Hearing Officer's proposed decision to approve the Penal Code section 4900 claim of Robert Cuevas.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:46 a.m.

Requests for Reconsideration
Recommendation: Allow
(Nos. 1 and 2)

The Board voted to adopt the staff recommendations.

Requests for Reconsideration
Recommendation: Deny
(Nos. 3-5)

The Board voted to adopt the staff recommendations.

Requests for Reconsideration Following Board Action on a Proposed Decision
Recommendation: Deny
(Nos. 6A-8)

The Board voted to adopt the proposed decisions.

Proposed Decisions on the Written Record
(Nos. 9-17)

The Board voted to adopt the proposed decisions.

**Proposed Decisions Following Failure to Appear
(Nos. 18-26)**

The Board voted to adopt the proposed decisions.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 11:48 a.m. to deliberate on the proposed decisions, numbers 27 through 50.

The Board reconvened into open session at 11:55 a.m.

Open Session

The Board voted to adopt the proposed decisions for numbers 27 through 50.

Adjournment

The Board meeting adjourned at 11:56 a.m.